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Supreme Court, U.S.
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No. 97-687

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1997

FRANK WOOD, TRUSTEE OF THE WOOD FAMILY TRUST

Petitioner,

v.

ELDEN W. BAINBRIDGE, TRUSTEE, ELDEN W. BAINBRIDGE TRUST, JUNE 13, 1968, et.al.,

Respondents.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI To The United States Court Of Appeals For The Ninth Circuit

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BRIEF OPPOSING
PETITION FOR WRIT OF CERTIORARI

This brief is filed on behalf of respondents Elden Bainbridge, his children and family, and the Bainbridge entities and family trusts.

Opinions Below

Petitioner's statement is accepted.

Jurisdiction

Petitioner's statement is accepted.

Statement of Facts

Petitioner's statement of facts is not accepted because it is based on conclusions rather than well-pleaded facts. The facts are stated in the laborious, confusing and repetitive allegations of the Second Amended Complaint. That document is too lengthy to summarize here. It is sufficient to say that its well-pleaded facts do not support Petitioner's assertions.

Reasons Not to Grant Petition

1. The conspiracy and respondeat superior issues are not properly presented for consideration. The Second Amended Complaint cannot be charitably described. The primary issue asserted to the Court of Appeals was whether the district court abused its discretion in refusing to allow plaintiff to file another amended complaint. That is not a certiorari-worthy issue.

2. The district court acted within its discretion. It required plaintiff to file contemporaneously with his amended pleading a RICO Case Statement stating all facts known to counsel on which the amended pleading was based. The RICO Case Statement, also conclusory and repetitive, demonstrates that plaintiff's problem is not a pleading deficiency, but a complete absence of facts. In opposing defendants' motions to dismiss, plaintiff's counsel asserted his theory that

RICO liability was predicated on "guilt by association" and that he knew of no specific facts or transactions to support his allegations of conspiracy and respondeat superior. See Petition G-3 et seq. The district court clearly acted within its discretion.

3. Because the asserted facts are presented in a defective pleading without a factual basis, they provide an insufficient factual basis upon which to consider the conspiracy and respondeat superior issues which Petitioner seeks to raise.

Conclusion

There is no reasonable basis for granting certiorari.

DATED October 29, 1997.

Jacob Tanzer

Counsel of Record for
Respondents Bainbridge, his
Children and Family, and the
Bainbridge Entities and Family
Trusts